

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

SECOND APPEAL NO.17 OF 2016

Babasaheb Sudam Shinde ... Appellant
Vs
Udhav Bapusaheb Kadam and Ors. ... Respondents
...
Mr. Surel S. Shah for the Appellant.

CORAM : SANDEEP K. SHINDE J.
DATE : APRIL 15, 2019

P.C. :

Aggrieved by the judgment and decree dated 8th April, 2015 in Civil Appeal No.37 of 2007 passed by the District Judge-1, Malshiras at Malshiras, the original plaintiff has preferred this appeal.

2 Facts in brief are as under:

Appellant/plaintiff was owner of the Gat No.82/6. On 3rd May, 1999, he executed a sale deed in respect of the Southern 50R land out of Gat No.82/6 in favour of defendant no.1 for consideration of Rs.60,000/- and another sale deed dated 3rd May, 1999 in favour of defendant no.2 in respect of 40R land towards the

Northern side of Gat No.82/6 for consideration of Rs.50,000/-. It is the plaintiff's case that defendant no.1 permitted him to retain land admeasuring 10R towards the Western side of land Gat No.82/6. It is his case that separate agreement was executed on 3rd May, 1999 by the defendant no.1 in his favour whereby defendant no.1 had agreed and permitted plaintiff to retain and remain in possession of the land to the extent of 10R. It is his case that defendant no.1 had agreed under the said agreement to execute the sale deed in respect of land admeasuring 10R once the provisions of the Consolidation Act ceased to apply to the area where the land is situated. It is not in dispute that the agreement was executed by the defendant no.1 after two sale deeds as stated hereinabove were executed by the plaintiff in favour of the defendant nos.1 and 2. On the assertion of the aforesaid facts, plaintiff would contend that he continued to be in possession of the land admeasuring 10R but was apprehending dispossession at the hands of the defendant and, therefore, filed Regular Civil Suit No.418 of 2000 for declaration of his title to the land admeasuring 10R situated on the Western side of the Gat

No.82/6B and 82/6A.

3 Both the Courts dismissed the suit on the ground that agreement dated 3rd May, 1999 is against the public policy being executed in defiance of the provisions of the Consolidation Act. Besides, both the Courts have held that plaintiff could not establish his possession in the suit land, i.e., 10R towards the Western side of the Gat Nos.82/6A and 82/6B.

4 The Appellate Court upon going through two sale deeds executed by the plaintiff in favour of the defendant no.2 has found that on 3rd May, 1999, plaintiff had handed over possession of 50R land to the defendant. Thus, in view of the recitals in the sale deeds, both the Courts have declined to accept assertions of the plaintiff about his possession in the suit land. In fact, oral evidence of the plaintiff's witness has not proved the fact that date on which suit was instituted, plaintiff was in possession of the suit land. Revenue record in respect of suit land shows that in August, 1999 name of the defendant no.1 is recorded in the revenue record vide mutation entry no.1540.

5 The appellant, therefore, has challenged essentially the findings of fact in this appeal. Agreement dated 3rd May, 1999 on the basis of which plaintiff is asserting his right is against the public policy being executed in defiance of the provisions of the Consolidation Act. Therefore, this agreement is to be kept out of consideration. That so far as the aspect of possession is concerned, both the Courts have recorded the finding that the plaintiff could not establish his possession in the suit land. This finding is consistent with the evidence on record. Appeal, therefore, does not give rise to any substantial question of law. Appeal is, accordingly, dismissed.

(SANDEEP K. SHINDE, J.)